IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARK BEASLEY,

Plaintiff,

v.

LUCKY STORES, INC., et al.,

Defendants.

Case No. 18-cv-07144-MMC

ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Before the Court is defendants' "Motion for Summary Judgment re: Statute of Limitations," filed March 20, 2020. Plaintiff Mark Beasley ("Beasley") has filed opposition, to which defendants have replied. Having read and considered the papers filed in support of and in opposition to the motion, the Court rules as follows.[1]

BACKGROUND

A. Beasley's Claims

The instant case is a putative class action lawsuit brought by Beasley, a California citizen, as a purchaser and consumer of Coffee-mate, a line of coffee-creamer products. Beasley alleges defendant Nestlé USA, Inc. ("Nestlé") "manufactures, markets, and sells" Coffee-mate (see Second Am. Compl. ("SAC"), filed October 4, 2019, ¶ 3), that four retailers, namely, defendants Lucky Stores, Inc. ("Lucky"), Save Mart Super Markets ("Save Mart"), Save Mart Companies, Inc. ("SMCI"), and The Kroger Company ("Kroger"), "sold Coffee-mate at their grocery stores throughout California" (see id. ¶ 4), and that, during the class period, he purchased Coffee-mate from grocery stores owned by said retailers.

According to Beasley, all flavors of Coffee-mate, other than the "'Natural Bliss'

[1] On April 17, 2020, the Court took the motion under submission.

line" (see id. ¶ 78), contained, during the class period, an "[a]rtificial" form of trans fat (see id. ¶ 18), specifically, partially hydrogenated oil ("PHO"), and that, during the class period, Coffee-mate's labels bore "unauthorized nutrient content claims" (see id. ¶ 81), namely, "0g Trans Fat" and/or "IT'S GOOD TO KNOW: 0g TRANS FAT/SERV" (see id. ¶ 78; see also id. ¶¶ 6, 81), which language, Beasley alleges, "was part of an intentional, long-term campaign to deceptively market Coffee-mate as healthful and free of trans fat" (see id. ¶ 79).

Based on the above allegations, Beasley asserts the following four Causes of Action: (1) "Unfair Competition Law [Cal.] Bus. & Prof. Code §§ 17200 et seq.," (2) "California False Advertising Law, [Cal.] Bus. & Prof. Code §§ 17500 et seq.," (3) "Breach of Express Warranty," and (4) "California Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750 et seq."[2] Beasley brings these claims both individually and on behalf of the following putative class: "[a]ll citizens of California who purchased in California, between January 1, 2010 and December 31, 2014, Coffee-mate containing the nutrient content claim '0g Trans Fat' and containing partially hydrogenated oil." (See id. ¶ 119.)

B. Relevant Procedural History

At the initial case management conference, held January 31, 2020, the Court granted defendants leave to file a motion for summary judgment on the limited issue of whether Beasley's claims are time-barred, set a briefing and discovery schedule thereon, and denied Beasley's request to file a cross-motion for summary judgment as to whether "0g Trans Fat" is an unlawful nutrient content claim.

On March 10, 2020, counsel for defendants deposed Beasley, and, shortly thereafter, defendants filed the instant motion. In support of his opposition to defendants' motion, Beasley filed, inter alia, deposition errata pursuant to Rule 30(e) of the Federal Rules of Civil Procedure, whereby he made five changes to his deposition testimony, one

[2] The First, Second, and Fourth Causes of Action are brought against all defendants; the Third Cause of Action is brought solely against defendant Nestlé.

of which changed his answer to a question pertaining to when he first knew PHO "is the ingredient that is the source of artificial trans fat." (See Doc. 77-1 at 8:12-13.) In particular, he changed his answer from "I guess maybe in the late 1990s" (see id. at 8:16-17) to "I've known trans fat was bad since I'd guess in the late 1990s, and I learned that trans fat came from PHO in 2017" (see Doc. 78-1 at 60). In addition, Beasley filed a declaration, executed on April 3, 2020, in which he states he "did not know that partially hydrogenated oil was the source of artificial trans fat in food until 2017, or otherwise understand the connection between partially hydrogenated oil and trans fat." (See Doc. 78-2 at 2:16-18.)

LEGAL STANDARD

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, a "court shall grant summary judgment if the movant shows that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." See Fed. R. Civ. P. 56(a).

The Supreme Court's 1986 "trilogy" of Celotex Corp. v. Catrett, 477 U.S. 317 (1986), Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986), and Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574 (1986), requires that a party seeking summary judgment show the absence of a genuine issue of material fact. Once the moving party has done so, the nonmoving party must "go beyond the pleadings and by [its] own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial." See Celotex, 477 U.S. at 324 (internal quotation and citation omitted). "When the moving party has carried its burden under Rule 56[ ], its opponent must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita, 475 U.S. at 586. "If the [opposing party's] evidence is merely colorable, or is not significantly probative, summary judgment may be granted." Liberty Lobby, 477 U.S. at 249-50 (citations omitted). "[I]nferences to be drawn from the underlying facts," however, "must be viewed in the light most favorable to the party opposing the motion." See Matsushita, 475 U.S. at

587 (internal quotation and citation omitted).

DISCUSSION

On October 29, 2018, Beasley filed his initial complaint. By the instant motion, defendants argue Beasley's claims are barred by the applicable statutes of limitation, the longest of which is four years, and that, although Beasley declares he "first learned that Coffee-mate contained trans fat . . . in 2017 during a discussion with [his] attorney" (see Doc. 78-2 at 1:4-5), he is not entitled to delayed accrual of his claims.

Under California law, the "discovery rule . . . postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action." See Fox v. Ethicon Endo-Surgery, Inc., 35 Cal. 4th 797, 807 (2005) (internal quotation, citation, and emphasis omitted). "When a plaintiff reasonably should have discovered facts for purposes of the accrual of a cause of action," however, "is generally a question of fact, properly decided as a matter of law only if the evidence . . . can support only one reasonable conclusion." See Rosas v. BASF Corp., 236 Cal. App. 4th 1378, 1394 (Cal. App. 2015) (internal quotation, citation, and alterations omitted). A plaintiff has reason to discover a cause of action "when he at least suspects a factual basis, as opposed to a legal theory, for its elements, even if he lacks knowledge thereof," i.e., when "he at least suspects that someone has done something wrong to him." See id. at 1389 (internal quotations, citations, and alteration omitted). The discovery rule thus "only delays accrual until the plaintiff has, or should have, inquiry notice of the cause of action." See Fox, 35 Cal. 4th at 807 (explaining, "plaintiffs are required to conduct a reasonable investigation after becoming aware of an injury, and are charged with knowledge of the information that would have been revealed by such an investigation").

Here, defendants first note it is undisputed that at all relevant times the ingredient list on Coffee-mate products listed "partially hydrogenated" oil as an ingredient. (See, e.g., Doc. 77-2 at Ex. 3.) Defendants then argue Beasley is not entitled to delayed accrual because, at his deposition, he admitted (1) he has known since the "late 1990s" (see Doc. 77-1 at 8:17) that PHO "is the ingredient that is the source of artificial trans fat"

(see id. at 8:12-13, 17), (2) he has been aware for "at least ten years," i.e., since 2010, that packaged foods contain an ingredient list (see id. at 18:10), (3) during the class period, 2010-2014, he sought to avoid consuming trans fat, and (4) he knows consumers seeking to avoid trans fat can look at a food product's ingredient list to see if it contains PHO. According to defendants, Beasley "is held to behave as he would expect another consumer to behave, *i.e.*, review the ingredient list on the back of the Coffee-mate products he purchased, which declared the presence of PHO" (see Mot. at 10:23-25) and thus "was at least on inquiry notice, if not actual notice, during the class period of the factual basis for his claims" (see id. at 9:17-18).

In response, Beasley contends he "misspoke at his deposition" (see Opp'n at 7:1) when he said he has known since the late 1990s that PHO is the source of trans fat and that the Court should credit his deposition errata and declaration, wherein he stated that, until 2017, he did not know PHO is the source of artificial trans fat. As defendants point out, the timing of such later statements, i.e., after defendants' motion for summary judgment was filed, is suspect, as is the direct contradiction between those statements and the deposition testimony on which defendants' summary judgment motion relies. See Hambleton Bros. Lumber Co. v. Balkan Enterprises, Inc., 397 F.3d 1217, 1225 (9th Cir. 2005) (finding no abuse of discretion where district court struck changes to deposition made after defendant moved for summary judgment; noting "Rule 30(e) . . . is to be used for corrective, and not contradictory, changes"); Kennedy v. Allied Mut. Ins. Co., 952 F.2d 262, 266 (9th Cir. 1991) (holding "general rule in the Ninth Circuit is that a party cannot create an issue of fact by an affidavit contradicting his prior deposition testimony"). As set forth below, however, even if the challenged changes are disregarded, a triable issue of fact as to accrual remains.

As noted, defendants contend Beasley "is held to behave as he would expect another consumer to behave," which, according to defendants, is to "review the ingredient list." (See Mot. at 10:23-24.) As the Ninth Circuit has observed, however, "reasonable consumers expect that the ingredient list [on packaged food items] contains

more detailed information about the product that confirms other representations on the packaging." See Williams v. Gerber Products Co., 552 F.3d 934, 939-40 (9th Cir. 2008) (emphasis added). Defendants cite to no authority suggesting to the contrary.[3]

Here, there is no dispute that the phrase "0g Trans Fat" was placed on Coffee-mate packaging (see Doc. 77-2 at Exs. 3, 6)[4] and that, on each Coffee-mate product, the Nutrition Facts panel above the ingredient list contains the phrase "Trans Fat/Grasa Trans 0g" (see id. at Exs. 3-8). Although, in any given case, a plaintiff may possess information to alter the above-noted general expectation and, as a matter of law, put such plaintiff on inquiry notice, in this case, even given his knowledge about the relationship between PHO and trans fat, the Court finds a triable issue of fact exists as to whether Beasley, faced with multiple clear statements about the absence of trans fat in Coffee-mate, should have investigated the ingredient list. See O'Connor v. Boeing North American, Inc., 311 F.3d 1139, 1150 (9th Cir. 2002) (holding "[w]hen the evidence yields conflicting inferences, summary judgment is improper").

CONCLUSION

For the reasons stated above, defendants' motion for summary judgment is hereby DENIED.

IT IS SO ORDERED.

Dated: June 12, 2020

MAXINE M. CHESNEY
United States District Judge

[3] The cases on which defendants rely, namely, Ries v. Arizona Beverages USA LLC, 287 F.R.D. 523 (N.D. Cal. 2012) and Allen v. Similasan Corp., 96 F. Supp. 3d 1063 (S.D. Cal. 2015), are distinguishable on their facts. See Ries, 287 F..R.D. at 527 (holding plaintiff on inquiry notice where she testified she read ingredient list); Allen, 96 F. Supp. 3d at 1071 (holding plaintiff on inquiry notice as to "[p]roducts' alleged ineffectiveness after using them several times with no result").

[4] In his opposition to defendants' motion, Beasley requests the Court sua sponte enter summary judgment against defendants as to whether "0g Trans Fat" is an unlawful nutrient content claim. As noted above, however, the Court previously denied Beasley leave to file a cross-motion for judgment on this very issue, and, accordingly, his request is denied.